

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT FACKOVEC,

Plaintiff,

08-CV-00238 (LBS)(DFE)

-against-

ANSWER

LONG ISLAND RAILROAD COMPANY,

Defendant.

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S I R S :

Defendant, The Long Island Rail Road Company ("LIRR"), sued herein as LONG ISLAND RAILROAD COMPANY, by its attorney, MARK D. HOFFER, answering the Complaint of plaintiff, alleges upon information and belief:

1. Admits each and every allegation contained in paragraph "FIRST" of the Complaint.
2. Denies each and every allegation contained in paragraph "SECOND" of the complaint, except admits the defendant is a public benefit corporation is engaged in interstate commerce by rail and operate a railroad system and railroad yards within the jurisdiction of this Court and in various other states.
3. Denies each and every allegation contained in paragraph "THIRD" of the complaint, except admits that prior to January 16, 2007 and at all times hereinafter mentioned, the defendant employed the plaintiff as an electrician in furtherance of defendant's business in interstate commerce.
4. Denies each and every allegation contained in paragraphs "FOURTH" and "SIXTH" of the Complaint and refers questions of law to the Court for determination.
5. Denies each and every allegation contained in paragraphs "FIFTH" and "SEVENTH" of the Complaint.

**DEFENDANT, FURTHER ANSWERING AND FOR A FIRST,
SEPARATE AND COMPLETE DEFENSE TO ALL CAUSES OF ACTION,
IF ANY, ALLEGED IN THE COMPLAINT HEREIN, ALLEGES:**

6. Upon information and belief, that if the plaintiff was injured as is alleged in the complaint, he was so injured in whole or in part by reason of his own negligence and without any fault or any negligence on the part of the defendant, its agents, servants and/or employees, and the defendant did not violate any statute or statutes enacted for the safety of its employees.

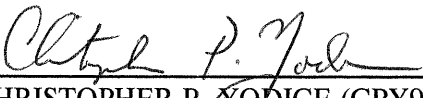
**DEFENDANT, FURTHER ANSWERING AND FOR A SECOND,
SEPARATE AND COMPLETE DEFENSE TO ALL CAUSES OF ACTION,
IF ANY, ALLEGED IN THE COMPLAINT HEREIN, ALLEGES:**

7. Plaintiff has failed, in his Complaint, to mitigate his alleged damages.

WHEREFORE, defendant, LONG ISLAND RAIL ROAD COMPANY, demands judgment dismissing the complaint herein together with costs and disbursements of this action.

Dated: Jamaica, New York
February 4, 2008

MARK D. HOFFER, ESQ.
Attorney for Defendant

BY: 
CHRISTOPHER P. YODICE (CPY9723)
LIRR Law Department - 1143
Jamaica Station
Jamaica, New York 11435-4380
(718) 558-8235
(File No. TPA-0142 / MTACF000977)

TO: **LAW OFFICES OF MICHAEL FLYNN, PC**
Attorneys for Plaintiff
1205 Franklin Avenue
Garden City, NY 11530
(516) 877-1234